THE HON'BLE MRS JUSTICE T.MEENA KUMARI

And

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO : 10497 of 2005

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This writ petition is filed seeking to set aside the order dated 04.04.2005 passed in O.A.NO.5783 of 2004 and also seeking consequential direction to the respondent to promote the petitioner as Additional Director/Equivalent post with effect from 06.12.1994 by setting aside the Memo No. 24737/I.I/2003-3, dated 06.08.2004 declaring it as illegal, arbitrary and violative of rights guaranteed under Article 16 of the Constitution of India and also to pay all the salary and allowances as per rules from the date of notional promotion to be ordered.

2. The relevant facts in brief are as follows:

The writ petitioner is a retired government servant having been retired on 13.02.1997 as Post Graduate Reader in Government Nizamia Tibbi College, Hyderabad. The litigation has got chequered history. Several original applications and also writs were filed. The relevant previous litigation is the petitioner had filed two original applications before the Andrha Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in O.A.No.1434 of 1996 and 2935 of 1996. O.A.No.1434 of 1996 was filed before the Tribunal against the State represented by the Principal Secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad impleading one Dr. Bilquis Jahan Nadri as 2nd respondent. In that O.A. the writ petitioner prayed for a direction to consider the applicant for promotion to the post of Additional

Director/Principal, Tibbi College/Professor (PG) in review D.P.C. meeting which was held on 01.03.1996 and promote the applicant from the date of vacancy of Principal/Professor (PG)/Additional Director and to give all consequential benefits with effect from 01.03.1996. He also sought for further declaration that Rule 2 of the Special Rules for A.P. Indian Medicine Homeopathy Service Rules issued in G.O.Ms.No.265, M &H dated 26.05.1994 so far as it excludes the post of Post Graduate Readers (Unani) from the posts enumerated in Category-I of Class-C (Unani) viz. Additional Director (Unani) including Principal of UnaniTibbi College and Post Graduate Professor (Unani) and include the same in Category-2 which consists of lower status posts such as Chief Medical Officer (Unani) , R.M.O. etc. as illegal, arbitrary and violative of Article 14, 16 and 21 of the Constitution of India. He also sought for further direction that the applicant is entitled to be considered for promotion to the posts of Additional Director/Principal Tibbi College/Professor(PG) in preference to the persons holding the posts of Chief Medical Officer (Unani) or its equivalent posts under the old rules.

O.A.NO.2935 of 1996 was filed against the State of Andhra Pradesh impleading Dr. Tahera Bano, Professor (P.G.)/Incharge Principal, Government Nizamia Tibbi College, Dr. Bilquish Jhan Nadri (PG) Research Officer, G.G.H., Dr.Durdana Hameed, Superintendent, Government Nizamia General Hospital, and Dr. Gulam Yazadani khan, Chief Medical Officer, Government Nizamia General Hospital as respondents. In the said application the applicant sought direction to the State Government to order reversion of Dr. Tahera Bano from the post of Professor (PG) to the Reader Department of Mulijath of Government Nizamia Tibbi College, Hyderabad and to consider the applicant from the date of eligibility for the post of Professor (PG) i.e. 01.03.1996 and to give consequential benefits thereon. The O.As were disposed by a common order by the A.P. Administrative Tribunal (for short 'The Tribunal') on 12.03.1998 with the following observations and directions.

> "It is considered that it would be necessary for the respondents to examine and consider the case of the applicant with reference to the his main contentions that he was promoted as a Reader (PG) with reference to the old rules, that he is an M.D. qualified person, that the other persons

considered for promotion by the DPC earlier, having been holding posts which were inferior in status as per the old rules and not having had the qualification of Post Graduation and also having not passed the Accounts Test for Executive Officers were not qualified to be considered and that he was the only qualified person to be considered for promotion by the DPC. Accordingly, the respondents are directed to examine and consider the case of the applicant for notional promotion retrospectively and for according the consequential benefits as per rules keeping the whole position in view and pass appropriate orders in the matter within a period of 2 months from the date of receipt of these ordes.

The O.As are accordingly disposed of with the above directions."

3 . Thereafter, the Government issued Memo No.24737/I.1/2003-3, Dated 06.08.2004 stating that in pursuance of the A.P. Administrative Tribunal order dated 20.03.1998 in O.A.No.1436/96 and O.A.No.2935/96 and further direction dated 02.12.2003 in M.A.No.3937 of 2003 in O.A.No.1434 of 1996, Government after careful examination of the above facts, have arrived at a conclusion that there is no case for considering notional promotion of Dr. Mohd Azeemuddin, Reader, P.G. (Retired) to the post of Additional Director/Principal/P.G. Professor (Unani) as no junior to him was promoted to the said category, and hence, the case of the applicant for his promotion is rejected.

4 . Aggrieved by the same, the present writ petitioner again approached the Tribunal with a contempt application in C.A.No.167 of 2004 in O.S.No.1434 of 1996 seeking punishment of the official respondent for willfully flouting the orders of the Tribunal in M.A.NO.3937 of 2003 in O.A.No.1434 of 1996, dated 02.12.2003. In the said contempt application the learned Government Pleader appearing on behalf of the respondents, produced Memo No.24737/I.1/2003-3, dated 6.8.2004 stating that the case of the applicant was considered in pursuance of the directions of the Tribunal and compliance order has been passed by the respondents rejecting the claim of the applicant. The present writ petitioner contended that the order has not been passed in accordance with the rules and he was only the person who was eligible for promotion of Additional Director as he was holding the post which was feeder category to the post of Additional Director in terms of the rules issued in G.O.Ms.No.265, dated 26.05.1994. But the Tribunal observed that as it was only a contempt case, the

merits of the order need not be gone into and that the only thing to be seen is whether the orders are complied with by passing appropriate orders by the authorities, which has been done in the said case, and therefore, the respondents have sufficiently complied with the orders of the Tribunal and as such, the contempt application is closed. In the said contempt application, the Tribunal further observed that it is left open to the writ petitioner, who appeared as party-in-person to challenge the orders passed by the official respondents in appropriate forum if he chooses.

5. Thereafter, the writ petitioner again approached the Tribunal in O.A.No.5783 of 2004 praying the Tribunal to declare him that he is entitled to be promoted as Additional Director/equivalent post with effect from 06.02.1994 i.e. the date of convening the D.P.C., by setting aside the Memo No.24737/I.1/2003-03, dated 6.8.2004 as illegal, arbitrary and violative of rights guaranteed under Article 16 of the Constitution of India. The said O.A. was dismissed on 04.04.2005 holding that as the applicant was not promoted as Principal or P.G., Professor, he cannot claim any right to be considered for promotion to the post of Additional Director and further the Additional Director is an administrative post and the applicant cannot claim promotion as an automatic right to such post and further in view of Note-5 under Rule –3 of the Special Rules framed in G.O.Ms.No.265, H.M. & F.W., Department, dated 26.05.1994, the applicant could not be considered to the post of Additional Director.

6. Aggrieved by the said orders of the Tribunal, the present writ petition has been filed questioning the action of the official respondent in Memo No.24737/I.1/2003-3, dated 6.8.2004, wherein the claim for promotion to the post of Additional Director or other equivalent post is rejected. In the affidavit accompanying the writ petition, the writ petitioner mainly relied on the orders passed by the Tribunal in O.A.No.1434 of 1994 dated 20.03.1998. According to the writ petitioner, the Tribunal gave a finding that the writ petitioner has a status of Class II along with Professor (PG) and Principal, Nizamia Tibbi College and that Durdana Hameed and Dr. B. Jahen Nadri were class III officers and thus, the said two officers are inferior in status to the writ

petitioner, and therefore, the Tribunal directed the official respondents to examine and consider the case of the writ petitioner for notional promotion retrospectively with effect from 06.12.1994 on which date, the D.P.C. met and the said orders have not been complied with by the official respondents and the thus official respondents flouted the orders and rejected the claim of the petitioner for promotion. The Tribunal in O.A.No.5783 of 2004 failed to implement the earlier orders dated 23.09.1998 passed in O.A.No.1434 of 1996 and totally ignored the said orders and virtually reviewed all the orders passed by the Tribunal in the earlier applications, though the said O.A. was filed seeking to implement the earlier orders dated 23.09.1998, and hence, the Tribunal grossly erred in upholding the Memo issued by the Government and rejecting the claim of the writ petitioner.

7. The main contention of the writ petitioner is that he was promoted as Reader in P.G. Units with retrospective effect from 07.07.1994, and therefore, the said promotion was given under the old rules issued in G.O.Ms.No.430 M&H Department, dated 04.07.1983, under which, the Reader in P.G./Professor (Unani) were classified as Class-II officers, whereas the Medical Officers were shown as Class-III as per the Rules in G.O.Ms.No.129 M & H, dated 27.02.1981 and while so, in the special rules issued in G.O.Ms.No.265, dated 26.05.1994 the Post of Reader was removed from the category in which the Professor in P.G. Units is placed i.e. category-II under Class-C and relegated to category-II and equated with the Chief Medical Officers, who were earlier in Class-III and that as the writ petitioner was promoted with effect from the year 1992 under the old rules, the new rules have no application, and therefore, the D.P.C. which met on 26.12.1994 ought to have considered him for promotion to the category of Additional Director or equivalent post in preference to the Chief Medical Officers, who were in Class-III under the old rules, and therefore, the impugned memo issued by the Government dated 06.08.2004 is not in accordance with the rules and no in accordance with the directions given by the Tribunal in O.A.No.1434 of 1996, dated 20.03.1998.

8 . The respondents-Government filed counter affidavit para-wise remarks contending that the A.P. Administrative Tribunal in its judgment dated 20.04.1998 directed the respondents to examine and consider the case of the applicant for notional promotion retrospectively and for according consequential benefits as per rules, keeping the whole position in view and pass appropriate orders in the matter, and that accordingly, the Government after careful examination came to a conclusion that the writ petitioner is not entitled for any notional promotion to the post of Additional Director/Principal/ P.G. Professor as there are 17 other seniors to him and no junior to him was promoted to the said category. It is further pleaded that the D.P.C. held on 06.12.1994 to consider the proposals, returned the proposals with a request to submit fresh proposals to place before the D.P.C. and subsequently, the D.P.C. met on 01.03.1996 and approved certain names for promotion to the post of Additional Director/Principal/P.G. Professors and the claim of the writ petitioner was also considered by the D.P.C. in that meeting in the light of the directions of the Tribunal in V.M.A.No.210 of 1995 in O.A.No.623 of 1995 and with reference to the records and the D.P.C. has decided that the turn of the writ petitioner for inclusion in the panel did not come.

9. It is further pleaded that Dr. Bildquis Jehan Nadry and Dr. Duradana Hameed were promoted as Chief Medical Officer/Professor on 21.07.1983, whereas the applicant was promoted as Reader notionally with effect from 7.7.1992 and he is far junior to these two officers. It is further pleaded that the contention of the writ petitioner that these two Chief Medical Officers, who are inferior in status to the writ petitioner, is not correct and that the posts of reader and Professor (Unani) are equivalent posts and the scale of pay attached to the said posts are also same, and therefore, in the revised rules dated 26.05.1994, they were categorized under the same category i.e. Category 2 of Class C (Unani) of the said Rules. It is pleaded in the counter that the posts of Principal/Chief Medical Officers/Professor were earlier governed by A.P. Indian Medicines Rules issued in G.O.Ms.No.129, M & H (I.2) Department, dated 27.02.1981. According to which, for promotion to the post of Principal, one must have put in less than three years in feeder category with administrative experience and must be approved probationer. Whereas in P.G. Units i.e. P.G. Professor were

governed by Ad-hoc rules issued in G.O.Ms.No.430, M & H Department, dated 4.7.1983, according to which, for promotion to the post of P.G. Professor, one must have possess M.D. in Unani with specilisation and seven years teaching experience. The feeder category for promotion to the post of Professor is the Reader and also Medical Officers/Professors (Unani). The post of Principla/Additional Director (Unani) and P.G. Professor were governed by the Ad-hoc Rules. In supersession themselves, G.O.Ms.No.265, dated 26.05.1994 was issued framing A.P. Indian Medicine and Homeopathy Rules which came into force from 30.06.1994. According to the said Rules, the post of Additional Director/P.G. Professor/Principal constituted under category-I of Class-C. According to which, for the promotion to the said post, one must have an approved probationer in the lower category i.e. Readers/Professors etc., and possess three years service and also passed Account test for Subordinate Officers. The Government further pleaded that there is no variation between Class-II and Class-III and that in the old Rules also the Feeder category for the Professor in P.G. units is by promotion from Readers, Medical Officers and Professors (Unani) and they were drawing the same scale of pay and therefore, in the new rules the Professor P.G. is placed in Category-I under Class-C and the feeder posts are placed under category-II, and therefore, the question of degrading the status of the Reader in the new Rules, does not arise. In the Counter, the Government relied upon an observation of the Tribunal in C.A.No.72/ of 1995 in O.A.No.7456 of 1992 dated 23.04.2002, wherein the tribunal quoted its earlier orders in M.A.No.3676 of 1996 in O.A.No.7556 of 1992 dated 12.04.2001 wherein it was held that the post of Reader and Professor cannot be equated. In the said orders in C.A.No.72 of 1995, it was observed that Dr. Hafeer Sarwari was promoted in the year 1999 itself Dr. Syed Abrar was promoted in 2001 whereas the applicant was retired in 1997 itself, and therefore, the question of writ petitioner getting promotion on par with the above two individuals does not arise. The respondent relied upon the said observations of the tribunal made in C.A.No.72 of 1995, dated 23.04.2002 and prayed for dismissal of the writ petition.

10. During the course of hearing, the writ petitioner, who appeared party-in-person, reiterated the contentions raised in the affidavit accompanying the writ petition and he submitted written arguments also. In the written arguments, he submitted that the Tribunal failed to implement its own judgment dated 23.09.1998 and the points settled in the said judgment were reopened by the government as well as by the Tribunal. The writ petitioner contended that as per the old rules in G.O.PS.No.129, dated 27.02.1981, Principal Unani Medical College, Principal Ayurvedic Medical College were grouped in Class-II whereas Gazetted Hakeems (Unani) including Professor Unani Medical Colleges & Inspector Board of Indian Medicine and also Chief Medical Officer (Unani) were classified under Class-III and that taking the said Rules into consideration, the Tribunal in O.A.No.1434 of 1996 ordered to consider the status of the P.G. Reader i.e. Class-II Officers. He further contended that as per the judgment of the Tribunal dated 20.03.1998, the writ petitioner is the only person qualified for the promotion as on the date of 6.12.1994 on which date the D.P.C. held and further the Tribunal disapproved the promotion which was given to those who have not passed the Account test for Subordinate Officers on 30.04.1996 and that while so, the very same Tribunal in O.A.No.5783 of 2004 observed that the present writ petitioner is far junior and there were 17 seniors to the writ petitioner and that in fact there are only 9 posts of Class-II officers in Unani College and therefore, the question of 17 seniors does not arise. It is further contended that the Tribunal gave no findings as to why his case for the Professor P.G. was not considered as per new rule-3, note-3. The party-in-person prayed for setting aside the impugned memo and also the impugned order of the Tribunal and to give direction to the respondents to give notional promotion of Additional Director or equivalent post with effect from 06.12.1994 or 01.03.1996 on which the date the D.P.C. met to consider promotion to the category of Additional Director and its equivalent posts, and to pay consequential benefits with exemplary costs.

11. On the other hand, the learned Government Pleader supported the impugned orders of the Tribunal contending that the Government in its Memo No.24737/I.1/2003, dated 6.8.2004 elaborately explained reasons for rejection of the claim made by the writ petitioner and that the said memo is self-

explanatory and hence, the writ petition is devoid of merits and it is liable to be dismissed.

12. The points that arise for consideration in this writ petition are:

1. Whether the respondents flouted the orders of the Tribunal passed in O.A.No.1434 of 1006, dated 20.03.1998?

2. Whether the writ petitioner is entitled for notional promotion to the post of Additional Director or to any other equivalent post with retrospective effect from 6.12.1994 or 1.3.1996 on which dates the D.P.C. held meetings to consider the promotions to those posts?

3. Whether the Memo No.24737/I.1/2003-3, dated 6.8.2004 is sustainable in law?

4. Whether the impugned orders passed in O.A.No.5783 of 2004 are liable to be set aside?

5. To what relief?

13**. <u>POINT NO.1:-</u>**

A perusal of the common orders passed in O.A.No.1434 of 1006 and O.A.No.2935 of 1996 dated 20.03.1998 the learned Division Bench of the Tribunal have extracted the contentions raised by the writ petitioner and also the present respondents. The learned Tribunal at page-9 framed the point in dispute as follows:

> *"Here, what is to be seen is whether what the applicant has stated in the O.As and in the M.As filed and also in his reply to the counter that his case should have been considered with reference to the hold rules that he was the only fully qualified person for being considered for promotion as on the dates of the D.P.C. both*

in the year 1994 and in the year 1996 and that without considering his case, unqualified persons were considered without reference to the relevant rules is correct."

The reading of the judgment goes to show that no categorical finding has been given on the contentions raised by the writ petitioner and that is the reason the O.A. was "disposed of" with certain directions and the O.A. is not allowed. For better appreciation, it is useful to extract the relevant discussion portion of the Tribunal as follows:

> In the counter, it is not disputed that as per the old rules as amended in 1983 the post of Reader was constituted under category-2 in addition to the post of Professor (PG) under category-1 in Class-II. According to the applicant, the post of Reader (PG) is of equal status to Principal and Professor (PG) Unit and that the post of Chief Medical Officer and the teaching posts at the graduate level which required only diploma or graduation are inferior to the post of Reader (PG) as per the old rules and equating those posts of Chief Medical Officer/Professor (Ayurveda) etc., with Reader (PG) Professor (PG) would not be correct. The applicant has also stated that even as per the new rules under Note-3 of Rule-3 for teaching posts in P.G. Units, as far as possible, Post Graduates should be taken.

> The respondents have not countered the stand of the applicant that he was promoted to the post of Reader (PG) as per the old rules and that he had passed the Accounts Test by the time the proposals for promotion in 1994 to category-1 Class-II posts were considered by the D.P.C. It is also seen that even those considered for promotion had not passed the Accounts Test. They were only subsequently exempted from the requirement of passing of the Accounts Test for Executive Officers. There is no answer from the official Respondents to this in the counter. In fact, in response to the O.A.s6180 of 1996, O.A.No.7461 of 1996 and O.A.487 of 1997, the official respondents had conceded that for the teaching posts in the Post Graduate Units the requirement of Post Graduation is essential, which fact in a way is clear from Note-3 of Rule-3 of the new rules issued under G.O.Ms.No.265, dated 26.05.1994. In those O.As, the respondents had also indicated that even keeping in view the regulations of the CCIM, New Delhi, and also the judgments of the High Court of A.P., they were considering amendments to the new rules, providing for the Post Graduation qualifications for the teaching

posts in the P.G. Units. Therefore, it is considered not necessary to given any specific direction with regard to the plea of the applicant for amending the new rules issued in G.O.Ms.No.265, dated 26.05.1994.

In the counter the official respondents have stated that with reference to the directions of this Tribunal, the case of the applicant for the post of Principla/Additional Director was considered in the Departmental Promotion Committee held on 1.3.1996 and his case would again be placed before the next DPC for consideration along with other eligible candidates. But, it is considered that it would be necessary for the respondents to examine and consider the case of the applicant with reference to his main contentions that he was promoted as Reader (PG) with reference to the old rules, that he is an M.D. qualified person, that the other persons considered for promotion by the DPC earlier, having been holding posts which were inferior in status as per the old rules and not having had the qualification of Post Graduation and also having not passed the Account Test for Executive Officers were not qualified to be considered and that he was the only qualified person to be considered for promotion by the DPC. Accordingly, the respondents are directed to examine and consider the case of the applicant for notional promotion retrospectively and for according the consequential benefits as per rules keeping the whole position in view and pass appropriate orders in the matter within a period of 2 months from the date of receipt of these orders.

The O.As are accordingly disposed of with the above directions."

14. As seen from the above discussion of the learned Tribunal, the Tribunal nowhere gave any specific findings regarding the contentions raised by the writ petitioner, who is the applicant therein. On the other hand, the learned Tribunal, thought it fit to leave it to the Government to consider the case of the applicant with reference to his main contentions referred to supra, and pass appropriate orders keeping the whole position in view. Therefore, we are unable to agree with the contentions of the writ petitioner that the Tribunal gave findings in his favour in O.A.No.1434 of 1996 and that the Government cannot reopen the contentions raised in the said O.As. If really positive findings were given in favour of the applicant in respect of the disputed points, there was no need for the Tribunal to direct the Government to examine and consider and then pass appropriate orders taking the whole position in view in the light of the contentions raised by the applicant. Further, if really the Tribunal had accepted the contentions raised by the applicant therein, the writ petition would have

been allowed and positive directions would have been given to give notional promotion to the writ petitioner with retrospective effect from 06.012.1994 or 01.03.1996 and to pay consequential benefits in accordance with the Rules. No such directions were given by the Tribunal. On the other hand, the O.As were disposed of with a direction to the official respondents to examine the contentions raised by the applicant and consider the same and pass appropriate orders. Therefore, we do not find any force in the contentions raised by the writ petitioner-in-person. In fact, when the writ petitioner herein approached the very same Tribunal by way of contempt application, the learned Tribunal dismissed the contempt application observing that the Tribunal had only directed the official respondents to examine and consider the case of the applicant and the Government considered and rejected the claim of the applicant, and therefore, it amounts to compliance of the orders passed in O.A.No.1434 of 1996 dated 20.03.1998 and the orders passed in C.A.No.167 of 2004 in O.A.No.1434 of 1996 are not challenged.

15. Of course, the Tribunal in the said orders gave liberty to the applicant to challenge the consequential orders passed by the Government in Memo No.24737/I.1/2003-3, dated 6.8.2004. So far as the interpretation of the orders passed in O.A.No.1434 of 2002 is concerned, the Tribunal in C.A.No.167 of 2004 categorically held that the Tribunal did not give any positive findings in respect of the disputed points and that it only directed the Government to consider the contentions raised. We entirely agree with the said interpretation of the orders passed in O.A.No.1434 of 1996, dated 20.03.1998. Hence, the question of respondents flouting the orders passed in O.A.No.1434 of 1996 does not arise and thus, this point is answered against the writ petitioner and in favour of the respondents.

16. **POINT NOS.2 to 4:**

Nextly, it has to be seen whether the reasons given by the respondents in Memo No.24737/I.1/2003-3, dated 6.8.2004 for rejection of the claim of the writ petitioner are in accordance with the rules applicable to the employees of Indian

Medicine and Homeopathy.

17. As seen from the memo, the Government has given reasons for rejection and also referred to the Rules issued in G.O.Ms.No.129, M & H Department, dated 29.07.1991, Adhoc Rules issued in G.O.Ms.No.430, dated 4.7.1983 and also the special Rules issued in supersession in the earlier orders, in G.O.Ms.No.265 M & H and F & W Department, which came into force on 30.06.1994.

18. As seen from the Rules issued in G.O.Ms.No.129, M & H dated 27.01.1981 Principal, Unani Medical College and Principal, Ayurvedic Medical College alone were classified under Class-II and the Director, Indian Medicine, Homeo alone was classified under class-I under the Branch Indian Medicine. There is no reference either to the Additional Director or to the Professors or Readers in Post Graduation Units. For the post of Principals classified under Class-II, the feeder category is Gazetted Hakeem including Professors Unani Medical College or Ayurvedic College, as the case may be. Gazetted Hakeems (Unani) and Principal Ayurvedic Medical College were classified under Class-III and the feeder category for that post is by recruitment by transfer from senior Hakeems and lecturers and no reference to the Lecturers, Readers or Professors in Post Graduation Units as observed supra and that may be the reason why ad-hoc Rules have been framed in the year 1993 by way of issuing G.O.Ms.No.430, dated 4.7.1983. As per this G.O., the post of Professors and Readers were classified under Class-II, but at the same time, as seen from the method of appointment, the posts to Professors and Readers in Post Graduation units are not made equivalent. The post of Reader in Post Graduation is made the feeder category for promotion to the post of Professor in P.G. Units. As seen from the method of appointment for the post of Professors and Readers mentioned in Class-II, the method of appointment have been given separately for the Professors and Readers in the Post Graduation Units. The method of recruitment of Professors in P.G. Units is by way of promotion from four cadres

as follows:

1. Readers in Post Graduation Units.

2. Deputy Directors (Ayurveda) and (Unani).

3. Research Officers (Ayurveda) and (Unani)

4. Medical Officer (Unani), Medical Officer (Ayurveda) Herbarium Superintendent, Inspector, Board of Indian Medicine, Gaz. Vaids/Professors (Ayur), Gazetted Hakeems, Professors (Unani).

19. The method of recruitment of Readers in Post Graduation Units is by way of promotion from the Lecturers in Post Graduation Units/Senior Medical Officers/Lecturers (Ayurveda Unani) and senior demonstrator (Ayurveda & Unani). As seen from the method of recruitment by way of promotion to the post of Professors in Post Graduation Units not only the Reader in Post Graduation unit but also the Medical Officers and other officers mentioned supra are eligible. Therefore, it cannot be said that Professors in Post Graduation Units and Readers in Post Graduation unit are equal in rank. Merely because the Medical Officers and the Chief Medical Officers and others (who are in feeder category along with Readers for the post of Professors in Post Graudation Units) are shown in Class-III in the Rules 1981, it cannot be said that Chief Medical Officers and others are inferior to the cadre of Reader in Post Graduation Units. If that is so, Chief Medical Officers and others, who are in Class-III in the earlier Rules, would not have been mentioned as Feeder categories on par with the Readers in Post Graduation Units for the promotion to the post of Professors in Post Graduation units.

20. Further, it is not disputed that the Chief Medical Officer and the Readers in Post Graduation Units were drawing the very same scale of pay. That is the reason why the special Rules issued in G.O.Ms.No.365, dated 26.5.1994 classifying the Chief Medical Officer (Unani), including Superintendents of Unani Hospital, Research Officer (Unani), Resident of Medical Officer, Chief

Superintendent of Pharmacy (Unani), Professors and Post Graduate Readers (Unani), Regional Deputy Director, Inspector, Board of Indian Medicine and Superintendent, Government Herbarium were grouped in Category-II under Class-C and the Professors in Post Graduation Unit is classified under Class-I along with Additional Director (Unani) including Principal of Unani Tibbi College. Therefore, we are unable to agree with the contentions of the writ petitioner that the Chief medical Officer and others were inferior in status to the Reader in Post Graduation Units under the old Rules and for the first time they are equated with the Readers in Post Graduation Units in the revised Rules issued in G.O.Ms.No.265, dated 26.05.1994 which came into force from 30.06.1994. Even under the old Rules, the Chief Medical Officer and others mentioned supra were treated on par with the Readers in Post Graduation by making all of them in the Feeder category for the promotion to the post of Professors in Post Graduation units. Therefore, even if the old Rules are made applicable to the case of the writ petitioner, he cannot have precedence over the Chief Medical Officers, Gazetted Hakeems and Professors (Unani) while considering promotions to the post of Professors in P.G. (Unani)/Additional Director/ Principals of Colleges.

21. Admittedly, Dr. Bilquis Jahan Nadri, Dr. Durdana Hameed, Dr. Gulhan Yazdinkhan, Dr. Hafeer Sarwari and Dr. Syed Abrar, who were promoted as Additional Director/ Principal/P.G. Professor, are seniors to the writ petitioner. So far as the first three are concerned, they are far senior to the writ petitioners as they were promoted as Chief Medical Officers/Professors on 21.07.1983 whereas the writ petitioner was promoted as Reader notionally with effect from 07.07.1992. So far as the other two are concerned, they were also promoted along with the writ petitioners under G.O.Ms.No.407, dated 2.11.2001 with retrospective effect from 07.07.1992. Both of them were seniors to the writ petitioner in the seniority list. It is not disputed that the first three were considered for promotion in the D.P.C. held on 01.3.1996.

22. The contention of the writ petitioner is that they did not pass departmental

test i.e. Account Test for Executive Officers and therefore they were not eligible for the promotion to the cadre of Additional Director/Principal/ Professor in P.G. (Units). At the time of considering for promotion, one need not necessarily pass the said departmental test and as per the then existing rules, they have to pass during the probation period. As the said promotion was given during the fag-end of their career and as they already crossed 45 years, they were given exemption by the Government as the Government has got discretionary power to exempt from passing of the departmental tests, but at any rate, at the time of consideration for promotion by the D.P.C. non-passing of the test is not a disqualification. Therefore, on that ground, it cannot be said that their promotions ought not to have been considered by the D.P.C. on 1.3.1996.

23. So far as the DPC held on 6.12.1994 is concerned, no candidate was proposed and the proposals were returned with certain queries and subsequently, the D.P.C. was met on 1.3.1996. In that DPC the name of the writ petitioner was also considered in view of the orders of the Tribunal and found that his turn did not come and he has to wait for some more time. In so far as the DPC held on 6.12.1994 is concerned, the writ petitioner was not qualified because he was appointed to the feeder category notionally only with effect from 7.7.1992. For promotion, one must complete three years of service as approved probationer. So, by December 1994, the writ petitioner did not complete the minimum three years of service in the cadre of Reader in Post Graduation Units. Therefore, we are unable to accept the contention of the writ petitioner that he was the only the candidate qualified for consideration of promotion by the DPC held on 6.12.1994.

24. It is also not disputed that Dr Hafeez Sarwari, who is senior in the seniority list to the writ petitioner, was promoted in the year 1999 and Dr. Syed Abrar, who is also senior in the feeder category to the writ petitioner, was promoted in the year 2001 to the post of Additional Director/Professor in P.G. Units/Principal. It is also not disputed that the writ petitioner retired on 28.02.1997 itself. Therefore, the case of the writ petitioner for promotion to the cadre of Additional Director/ Professor/Principal with retrospective effect does

not at all arise.

25. The contention of the writ petitioner that his juniors were promoted is not correct. The memo issued by the Government is self-explanatory. From the reading of the memo it is clear that elaborate reasons were given and those reasons are very sound and are in accordance with the Rules framed by the Government. The said memo is self-explanatory. We do not find any reason to hold that the reasons given in the said memo for rejection of the claim of the writ petitioner are not sound.

26. In our considered view, the said memo is perfectly in accordance with the rules and the Government rightly rejected the claim of the writ petitioner. The Tribunal rightly dismissed the writ petition and we do not find any reason to interfere with the impugned orders of the Tribunal dated 4.4.2005 passed in O.A.No.5783 of 2004. Thus, both the points are found against the writ petitioner and in favour of the respondents.

27. **POINT NO.5:-**

In view of the findings in point Nos. 1 to 3, we have no hesitation to hold that the impugned order passed by the Tribunal are sustainable in law and the present writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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(T. MEENAKUMARI, J)

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(P. LAKSHMANA REDDY, J)

Date: -10-2005

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